

ASSEMBLY BILL

No. 2740

Introduced by Assembly Members Lackey and Low

February 19, 2016

An act to amend Section 236.1 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 2740, as introduced, Lackey. Human trafficking.

Existing law, as amended by Proposition 35, an initiative measure approved by the voters at the November 6, 2012, statewide general election, makes it a crime to deprive or violate another person's personal liberty with the intent to obtain forced labor or services. Existing law also makes it a crime to deprive or violate another person's personal liberty for the purpose of prostitution or sexual exploitation. Proposition 35 provides that it may be amended by a statute in furtherance of its objectives by a majority of the membership of each house of the Legislature concurring.

This bill would make technical, nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 236.1 of the Penal Code is amended to
2 read:
3 236.1. (a) ~~Any~~A person who deprives or violates the personal
4 liberty of another with the intent to obtain forced labor or services,

1 is guilty of human trafficking and shall be punished by
2 imprisonment in the state prison for 5, 8, or 12 years and a fine of
3 not more than five hundred thousand dollars (\$500,000).

4 (b) ~~Any~~A person who deprives or violates the personal liberty
5 of another with the intent to effect or maintain a violation of
6 Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4,
7 311.5, 311.6, or 518 is guilty of human trafficking and shall be
8 punished by imprisonment in the state prison for 8, 14, or 20 years
9 and a fine of not more than five hundred thousand dollars
10 (\$500,000).

11 (c) ~~Any~~A person who causes, induces, or persuades, or attempts
12 to cause, induce, or persuade, a person who is a minor at the time
13 of commission of the offense to engage in a commercial sex act,
14 with the intent to effect or maintain a violation of Section 266,
15 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or
16 518 is guilty of human trafficking. A violation of this subdivision
17 is punishable by imprisonment in the state prison as follows:

18 (1) Five, 8, or 12 years and a fine of not more than five hundred
19 thousand dollars (\$500,000).

20 (2) Fifteen years to life and a fine of not more than five hundred
21 thousand dollars (\$500,000) when the offense involves force, fear,
22 fraud, deceit, coercion, violence, duress, menace, or threat of
23 unlawful injury to the victim or to another person.

24 (d) In determining whether a minor was caused, induced, or
25 persuaded to engage in a commercial sex act, the totality of the
26 circumstances, including the age of the victim, his or her
27 relationship to the trafficker or agents of the trafficker, and any
28 handicap or disability of the victim, shall be considered.

29 (e) Consent by a victim of human trafficking who is a minor at
30 the time of the commission of the offense is not a defense to a
31 criminal prosecution under this section.

32 (f) Mistake of fact as to the age of a victim of human trafficking
33 who is a minor at the time of the commission of the offense is not
34 a defense to a criminal prosecution under this section.

35 (g) The Legislature finds that the definition of human trafficking
36 in this section is equivalent to the federal definition of a severe
37 form of trafficking found in Section ~~7102(8)~~ 7102(9) of Title 22
38 of the United States Code.

39 (h) For purposes of this chapter, the following definitions apply:

1 (1) “Coercion” includes ~~any~~ a scheme, plan, or pattern intended
2 to cause a person to believe that failure to perform an act would
3 result in serious harm to or physical restraint against any person;
4 the abuse or threatened abuse of the legal process; debt bondage;
5 or providing and facilitating the possession of ~~any~~ a controlled
6 substance to a person with the intent to impair the person’s
7 judgment.

8 (2) “Commercial sex act” means sexual conduct on account of
9 which anything of value is given or received by ~~any~~ a person.

10 (3) “Deprivation or violation of the personal liberty of another”
11 includes substantial and sustained restriction of another’s liberty
12 accomplished through force, fear, fraud, deceit, coercion, violence,
13 duress, menace, or threat of unlawful injury to the victim or to
14 another person, under circumstances where the person receiving
15 or apprehending the threat reasonably believes that it is likely that
16 the person making the threat would carry it out.

17 (4) “Duress” includes a direct or implied threat of force,
18 violence, danger, hardship, or retribution sufficient to cause a
19 reasonable person to acquiesce in or perform an act which he or
20 she would otherwise not have submitted to or performed; a direct
21 or implied threat to destroy, conceal, remove, confiscate, or possess
22 ~~any~~ an actual or purported passport or immigration document of
23 the victim; or knowingly destroying, concealing, removing,
24 confiscating, or possessing ~~any~~ an actual or purported passport or
25 immigration document of the victim.

26 (5) “Forced labor or services” means labor or services that are
27 performed or provided by a person and are obtained or maintained
28 through force, fraud, duress, or coercion, or equivalent conduct
29 that would reasonably overbear the will of the person.

30 (6) “Great bodily injury” means a significant or substantial
31 physical injury.

32 (7) “Minor” means a person less than 18 years of age.

33 (8) “Serious harm” includes any harm, whether physical or
34 nonphysical, including psychological, financial, or reputational
35 harm, that is sufficiently serious, under all the surrounding
36 circumstances, to compel a reasonable person of the same
37 background and in the same circumstances to perform or to
38 continue performing labor, services, or commercial sexual acts in
39 order to avoid incurring that harm.

1 (i) The total circumstances, including the age of the victim, the
2 relationship between the victim and the trafficker or agents of the
3 trafficker, and any handicap or disability of the victim, shall be
4 factors to consider in determining the presence of “deprivation or
5 violation of the personal liberty of another,” “duress,” and
6 “coercion” as described in this section.

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